

United States Senate
WASHINGTON, DC 20510

August 29, 2019

The Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *New York State Rifle & Pistol Association v. City of New York*, No. 18-280

Dear Mr. Harris:

We write with regard to the petition in the above-titled case. That petition challenges a New York City law forbidding the transportation of locked, unloaded handguns, with few exceptions, as a violation of the Second Amendment. The City changed its laws after the Court granted the Association's petition. The Court therefore confronts the question whether the change in New York City's laws has mooted the Second Amendment challenge.

On August 12, several of our Democrat colleagues filed a brief *amicus curiae* in support of the City urging the Court to dismiss the case as moot under Article III of the Constitution. We of course have no problem with Senators submitting *amicus* briefs. Many of us have done so. But our colleagues did more than raise legal arguments in favor of mootness. They openly threatened this Court with political retribution if it failed to dismiss the petition as moot. The brief's final paragraph warned: "The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be 'restructured in order to reduce the influence of politics.' Particularly on the urgent issue of gun control, a nation desperately needs it to heal." The implication is as plain as day: Dismiss this case, or we'll pack the Court.

There is no greater example of the genius of our Constitution than its creation of an independent judiciary. Alexander Hamilton explained in Federalist No. 78 that "[t]he complete independence of the courts of justice is peculiarly essential in a limited Constitution." Only an independent judiciary can "guard the Constitution and the rights of individuals from ... dangerous innovations in the government, and serious oppressions of the minor party in the community." And history has proven the wisdom of this design. Time and again, our independent federal courts have protected the constitutional rights of Americans from government overreach even when that overreach was politically popular.

But judicial independence is under assault. Democrats in Congress, and on the presidential campaign trail, have peddled plans to pack this Court with more justices in order to further their radical legislative agenda. It's one thing for politicians to peddle these ideas in Tweets or on the stump. But the Democrats' *amicus* brief demonstrates that their court-packing plans are more than mere pandering. They are a direct, immediate threat to the independence of the judiciary and the rights of all Americans.

The Association has asked this Court to consider the constitutionality of a law that it believes infringes on the fundamental constitutional rights of ordinary New Yorkers. Democrats have responded by threatening to pack the Court if it decides in favor of the Association. Americans cannot trust that their constitutional rights are secure if they know that Democrats will try to browbeat this Court into ruling against those rights.

We are deeply concerned by our colleagues' *amicus* brief and the ideas it promotes. We take no position on the underlying Second Amendment question nor on the mootness issue currently before the Court. But judicial independence is not negotiable. We will brook no threats to this fundamental precept of our constitutional structure.

We therefore ask that the Justices fulfill their oaths to "faithfully and impartially" follow the law. They should rule in this case only as the law dictates, without regard to the identity of the parties or the politics of the moment. They must not be cowed by the threats of opportunistic politicians. Our constitutional republic depends on an independent judiciary ruling impartially on the basis of what the law says. We ask that the Justices stand firm and do their part to protect our "government of laws, not of men."

For our part, we promise this: While we remain Members of this body, the Democrats' threat to "restructure[]" the Court is an empty one. We share Justice Ginsburg's view that "nine seems to be a good number." And it will remain that way as long as we are here.

Mark McCull

Tony Ghe

Chuck Ginsburg

Laura Alexander

John Boozman

Joni Ernst

Tri S

Pat Roberts

Young

Mike Crapo

Marsha Blackburn

Robert Wicker

Tim Scott

John Connelly

Ron Johnson

Tom Tillis

John Barrasso

Jerry Moran

Cindy Hyde-Smith

M. Michael Risch

Bill Cassidy, M.D.

Dan Sullivan

Michael B. Enzi

Mike Braun

Mark R. E.

John Farrow

Richard Shultz

David Clark

John H. Hayes

Pat Rooney

Susan M. Collins

Steve Daine

Ben Sasse

Mitt Romney

Ted S

Denny J.

Rand Paul

Shelley Moore Capito

Ray Blunt

Long Duran

McR

Lee Richardson

Martha McSally

Rob Partanen

Jon E. Risch

TG Bear

Tom Catto

John Duran

Kevin Lamer

John Kennedy

David A. Padavan

See Danner